

Message Text

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E.O. 11652: N/A

TAGS: ASCH, PDIP, GY

SUBJECT: CIVIL SUIT AGAINST CHAIRPERSON OF SCHOOL BOARD

REF: STATE 050539

1. AT HEARING MORNING MARCH 4, J.T. CLARKE (COUNSEL) MADE WHAT WAS APPARENTLY RATHER INFORMAL MOTION THAT MATTER BE STRUCK AB INITIO. ACCORDING CLARKE, MAGISTRATE "AND SEVERAL OTHER LAWYERS IN COURT" AGREED WITH HIM BUT MAGISTRATE SAID (UNCLEAR WHETHER AT CLARKE'S REQUEST) THAT HE WOULD POSTPONE MATTER UNTIL MARCH 30 TO SEE IF PLAINTIFF COULD PERFECT MORE VIABLE CHARGE. BASIS OF MAGISTRATE'S INFORMAL OPINION THAT CHARGE NOT VIABLE, ACCORDING CLARKE, WAS THAT SCHOOL BOARD IS NOT LEGAL ENTITY, HENCE CANNOT BE SUED AS ENTITY AND THAT PERSON WHO HIRED PLAINTIFF WAS NOT MRS. MUDGE, AND, IN FACT, NO LONGER IN GUYANA.

2. ON AFTERNOON PRIOR TO HEARING, AMBASSADOR PER ARRANGEMENT BY FONMIN CONSULTED WITH ATTORNEY GENERAL SHAHABUDDEEN RE PARA 1 REFTEL. WHILE NOT COMMITTING GOG. A.G. APPEARED FAVORABLE. HOWEVER, PRIOR ANY ACTION, A.G. SAID HE WOULD NEED STATEMENT FROM STATE DEPT LEGAL ADVISOR'S OFFICE "INDICATING WHETHER, REGARD BEING HAD TO THE CHARACTER AND NATURE OF THE GEORGETOWN AMERICAN SCHOOL, THE SCHOOL BOARD WOULD IN GENERAL INTERNATIONAL PRACTICE BE CONSIDERED AS ENTITLED TO PLEAD DIPLOMATIC (OR SOVEREIGN) IMMUNITY IN A SUIT FOR WAGES".

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3. COMMENT: ATTORNEY CLARKE IS CONVINCED THAT MAGISTRATE WILL

DISMISS SUIT ON MARCH 30 AND THAT THEREFORE THERE WILL BE NO NEED TO RAISE DIPLOMATIC OR SOVEREIGN IMMUNITY ISSUE. A.G; ON OTHER HAND, APPROACHED ISSUE AS ONE HE FELT WOULD BE USEFUL FOR GUYANESE JURISPRUDENCE TO "EDUCATE" LOCAL COURTS ON DIPLOMATIC AND SOVEREIGN IMMUNITY ISSUE. WE WOULD COOPERATE IN SUCH EDUCATION ENDEAVOR WITH SOME RELUCTANCE, HOWEVER. A.G. RECENTLY SUBMITTED OPINION AT REQUEST OF COURT IN A SUIT FOR DAMAGES AGAINST A FORMER U.S. DIPLOMAT HERE ARISING OUT OF AUTOMOBILE ACCIDENT THAT DIPLOMATIC IMMUNITY FOR CIVIL ACTIONS OF A PRIVATE (I.E.NON-OFFICIAL) NATURE EXPIRED WITH DEPARTURE OF DIPLOMAT. THEREFORE, IN THAT PARTICULAR CASE, DIPLOMATIC IMMUNITY WAS NO DEFENSE. ACTUALLY, COURT DID NOT

REFUSE TO ACCEPT DIPLOMATIC IMMUNITY PLEA. IT HAD BEEN MADE WITHOUT OUR KNOWLEDGE OR CONCURRENCE BY LAWYER FOR INSURANCE COMPANY REPRESENTING U.S. DIPLOMATIC DEFENDANT AND WAS WITHDRAWN AT OUR REQUEST ON GROUND THAT WE PAID INSURANCE PREMIUMS PRECISELY TO AVOID NECESSITY OF INVOKING DIPLOMATIC IMMUNITY ON SUCH CIVIL CASES ARISING FROM AUTOMOBILE ACCIDENTS. END COMMENT.

4. SINCE IN THIS CASE MAGISTRATE AGREED THAT SCHOOL BOARD WAS NOT LEGAL ENTITY, CLARKE WAS OBVIOUSLY, IN POINT OF VIEW OF COURT, APPEARING AS ATTORNEY REPRESENTING MRS. MUDGE RATHER THAN SCHOOL BOARD OR USG. RE QUESTIONS IN PARA 4, A.G. EMPHASIZED THAT GUYANESE JURISPRUDENCE IS NEW, AND HE IMPLIED WITHOUT SUITABLE PRECEDENT. HE SAID THAT U.S. LEGAL PRECEDENT WAS INCREASINGLY USED TO SUPPLEMENT AND AT TIMES REPLACE BRITISH PRECEDENTS. WE WOULD THEREFORE

SUGGEST THAT DEPT'S RESPONSE TO HIS REQUEST PARA 1 BE BASED ON U.S. LEGAL PRECEDENT.
KREBS

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